



216895US6PCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :

Mario Polegato MORETTI

: EXAMINER: KAVANAUGH, J.

SERIAL NO: 10/009,482 :

FILED: June 13, 2001

: GROUP ART UNIT: 3728

FOR: BREATHABLE SHOE :

PROVISIONAL ELECTION OF SPECIES

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

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In response to the Office Action dated March 28, 2003, Applicants elect with traverse Species I, examples of which are shown in Figures 1 and 2, of the application. Accordingly, Applicants identify Claims 26, 27, 30, 34-39, 41-47, and 50 as readable on the provisionally elected species. Applicants further respectfully concur with the Examiner's determination that independent Claim 26 is generic.

Applicants respectfully traverse the outstanding requirement for several reasons.

MPEP § 806.04(f) requires:

Claims to be restricted to different species must be mutually exclusive.

The outstanding Official Action fails to address in any way whether the pending claims recite mutually exclusive characteristics and this failure provides a basis for traversing the election of species requirement.

#9
Election
E. J. Kavanagh
7/10/03

Further, MPEP § 803 states:

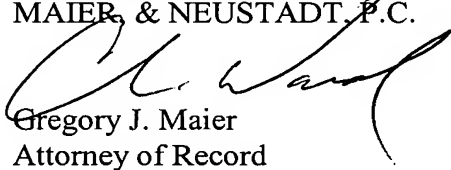
If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

The claims of the present invention would appear to be part of an overlapping search area. Further, Applicants respectfully assert that the features of the claims are well understood. Accordingly, Applicants also respectfully traverse the outstanding requirement on the grounds that a search and examination of the entire application would not place a *serious* burden on the Examiner.

Therefore, it is respectfully requested that the requirement to elect a single species be withdrawn, and that a full examination on the merits of Claims 26-50 be conducted.

Respectfully submitted,

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